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GENERAL AGENTS INSURANCE COMPANY OF AMERICA, INC.
(Erroneously sued and served as GAINSCO, INC.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BLAJIT SINGH,	)	CASE NO. C08-03874 PJH
individually and)	
allegedly doing business	)	[Rule 12(b)(6)]
as GREYLINE CAB/YELLOW)	
CAB,	)	NOTICE OF MOTION AND
	)	MOTION TO DISMISS;
Plaintiff,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT
v.	)	THEREOF
)	
GAINSCO, INC. and DOES 1)	
-10,)	
	)	Date: 09/24/08
Defendant.	)	Time: 9:00 a.m.
	)	Ctrm: 3
)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD
HEREIN:

PLEASE TAKE NOTICE that on September 24, 2008 at
9:00 a.m., or soon thereafter as counsel may be heard
in Courtroom 3 of the above-referenced Court located at
450 Golden Gate Avenue in San Francisco, California,
defendant General Agents Insurance Company of America,
Inc. (erroneously sued and served as GAINSCO, INC. and

1 hereafter "GAINSCO") will and hereby does move this
2 Court for an Order dismissing this action.

3 This motion is made pursuant to Rule 12(b)(6) of
4 the Federal Rules of Civil Procedure on the ground that
5 Plaintiff's claims against GAINSCO are time-barred and,
6 therefore, fail to state a claim upon which relief can
7 be granted. This motion is based on this notice, the
8 attached memorandum of points and authorities, all
9 pleadings and papers filed herein, and on such other
10 matters as may be presented at the hearing on this
11 motion.
12

13 Dated: August 18, 2008

BERMAN, BERMAN & BERMAN, LLP

14 By:


15 Spencer A. Schneider

John J. Moura

16 Attorneys for Defendant
17 GENERAL AGENTS INSURANCE
18 COMPANY OF AMERICA, INC.
(Erroneously sued and served
as GAINSCO, INC.)
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MEMORANDUM OF POINTS AND AUTHORITIES**I.****ISSUE TO BE DECIDED**

This action arises out of the alleged disclaimer of coverage by defendant General Agents Insurance Company of America, Inc. (erroneously sued and served as GAINSCO, INC. and hereafter "GAINSCO") to Baljit Singh, individually and allegedly doing business as Greyline Cab/Yellow Cab (hereafter "Singh"), in connection with an underlying personal injury lawsuit (hereafter the "Kuljeet Action"). Singh contends that GAINSCO had a duty to defend and indemnify him in the Kuljeet Action, and that GAINSCO's refusal to defend and indemnify was both wrongful, constituting a breach of contract, and unreasonable, constituting tortious "bad faith."

The issue to be decided on this motion is whether the Kuljeet Action is time-barred. The Kuljeet Action went to final judgment in February of 2000. The statute of limitations for an action based upon a written contract is four years (Cal. Civ. Proc. §337), and the statute of limitations for an action based on tortious bad faith is two years. (Cal. Civ. Proc. §339(1).) Singh did not commence the instant action for breach of contract and bad faith until June 27, 2008, over eight years after the Kuljeet Action was terminated by final judgment. Therefore, Singh's lawsuit against GAINSCO is time-barred as a matter of law.

II.

STATEMENT OF RELEVANT FACTS

Singh avers that he was named as a defendant in the Kuljeet Action (Complaint, 3:5-6), that he "timely tendered the Kuljeet Action complaint to GAINSCO" for a defense and indemnity (Complaint, 3:9-10), that GAINSCO "refused and continues to refuse to defend and indemnify" Singh (Complaint, 4:16-17), and as a result "the matter went into default." (Complaint, 3:7-8). Despite Singh's efforts "to set aside that default" (Complaint, 3:11), a default judgment was entered against Singh on February 28, 2000. (See Judgment By Court After Default, attached as Exhibit "A" to Singh's Complaint.)

On June 27, 2008, Singh commenced the instant action against GAINSCO in the Alameda County Superior Court entitled *Singh, et al. v. GAINSCO, Inc.*, Case No. RG08395501. The action was timely removed to this Court. GAINSCO denies that it issued an insurance policy to Singh, either individually or doing business as Greyline Cab/Yellow Cab.

III.

SINGH'S CLAIMS FOR RELIEF ARE TIME BARRED

The statute of limitations for a breach of contract claim in California is four years. Cal. Code Civ. Proc., §337. The statute of limitations for a tortious bad faith claim is two years. Cal. Code Civ. Proc.,

1 §339(1); *Velasquez v. Truck Ins. Exchange* (1991) 1 Cal.
2 App.4th 712, 719-721 [5 Cal. Rptr. 2d 1]; *Frazier v.*
3 *Metropolitan Life Ins. Co.* (1985) 169 Cal.App.3d 90
4 [214 Cal.Rptr. 883].

5 In *Lambert v. Commonwealth Land Title Ins. Co.*
6 (1991) 53 Cal.3d 1072 [282 Cal. Rptr. 445, 811 P.2d
7 737], the California Supreme Court held that an action
8 founded upon a liability insurer's alleged breach of
9 its contractual duty to defend its insured in a third-
10 party lawsuit is tolled until the lawsuit is over:

11
12 "The protection provided pursuant to a policy
13 of title insurance would ring resoundingly
14 hollow were the holder compelled to
15 simultaneously enforce rights under the policy
16 and defend a costly and potentially devastating
17 claim against the subject property. Thus, we
18 recognize the justice and fairness of equitably
19 tolling the insured's action to establish
20 coverage until resolution of the underlying
21 claim."

22
23 *Id.* at 1077 (Emphasis added).

24
25 In *Eaton Hydraulics Inc. v. Continental Casualty*
26 *Co.* (2005) 132 Cal.App.4th 966 [34 Cal.Rptr. 3d 91],
27 California's Second District Court of Appeal followed
28 *Lambert* in explaining that an action based on an

1 insurer's alleged breach of its duty to defend accrues
2 upon the insurer's refusal to defend, but is equitably
3 tolled "until the underlying lawsuit is terminated by a
4 final judgment":

5
6 "[I]t is settled that the duty to defend is
7 continuing, and that the limitations period is
8 equitably tolled from the time the cause of
9 action accrues - upon CNA's refusal to defend -
10 until the underlying lawsuit is terminated by a
11 final judgment. (*Lambert, supra*, 53 Cal.3d at
12 pp. 1077, 1079.)"

13
14 *Id.* at 973-974 (Emphasis added).

15
16 Here, the Kuljeet Action was terminated by final
17 judgment on February 28, 2000. Singh did not file the
18 instant action until June 27, 2008, over eight years
19 later. Although Singh's claims against GAINSCO based
20 on GAINSCO's alleged breach of its contractual duties
21 may have been tolled up until the judgment was entered
22 in the Kuljeet Action, that tolling period ended and
23 the limitations period started running on February 28,
24 2000, when the judgment became final. Because both
25 periods of limitations applicable to Singh's claims
26 expired well before Singh filed the instant action,
27 Singh's claims against GAINSCO are time-barred.

28 ///

1 Accordingly, Singh does not (and cannot) state a
2 claim upon which relief can be granted.

3
4 IV.

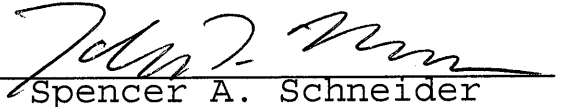
5 CONCLUSION

6 Based upon the above, GAINSCO respectfully requests
7 that Singh's motion to dismiss be granted without leave
8 to amend.

9
10 Dated: August 18, 2008

BERMAN, BERMAN & BERMAN, LLP

11 By:



12 Spencer A. Schneider
John J. Moura

13 Attorneys for Defendant
14 GENERAL AGENTS INSURANCE
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 11900 West Olympic Blvd., Ste. 600, Los Angeles, California 90064.

On August 18, 2008, I served the foregoing document described as **"NOTICE OF MOTION AND MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF"** on the interested parties in this action by placing a [X] true copy thereof [] the original document enclosed in a sealed envelope addressed as follows:

[SEE ATTACHED SERVICE LIST]

X (BY MAIL) In accordance with the regular mail collection and processing practices of this business office, with which I am familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California that same day in the ordinary course of business, I deposited such sealed envelope for collection and mailing on this same date following ordinary business practices.

____ (BY PERSONAL SERVICE)
 ____ By personally delivering copies to the person served.
 ____ I delivered such envelope by hand to the office of the addressee pursuant to C.C.P. Section 1011.
 ____ I caused such envelope to be delivered by hand to the office of the addressee, either by overnight delivery via Overnight Express.
 ____ I caused such envelope to be delivered to the office of the addressee, by telecopier or facsimile machine. Proof of such delivery is attached hereto.


STATE

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 18, 2008, at Los Angeles, California.

ANI MAKHANIAN

Name


 Signature

Service List

SINGH v. GAINSCO, INC.

United States District Court Case No. C08-03874 PJH
Alameda County Superior Court Case No. RG08395501

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allegedly doing business as GREYLINE CAB/YELLOW CAB